From: Randy McLaughlin
To: Microsoft ATR
Date: 1/23/02 3:59pm
Subject: Microsoft Settlement

To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530-0001

As a software developer with over 20 years' experience, and as the owner of a small software business, I'd like to comment, pursuant to the Tunney Act, on the Proposed Final Judgment in United States v. Microsoft.

The proposed settlement attempts to impose restrictions on Microsoft in order to limit Microsoft's ability to engage in further monopolistic practices. The settlement can be expected to fail to provide effective remedy.

It strikes me that the situation is similar to the ongoing race between those who write software viruses and those who are trying to protect our computer systems against them. A vulnerability is discovered and a number viruses are released exploiting the vulnerability. Security experts discover the virus and rush to find ways to stop the spread of the virus and to eliminate the vulnerability. Unfortunately, the virus authors have a head start. If they are able to release a strong enough virus it will be able to cause significant damage and massively reproduce before being detected. Even more time is needed and more infections occur before effective countermeasures can be developed and distributed. Meanwhile other people throughout the world are busy looking for new vulnerabilities to exploit and new ways to propagate and cause damage.

The proposed settlement attempts to identify ways in which Microsoft can be regulated based upon today's software and practices. But software is dynamic. Today's software is different than software written five years ago. Many key technologies have developed during that short time. For example, during that time Microsoft has developed the .NET platform and has reoriented the architecture of its products around that platform. We can expect that trend to continue. Indeed, the proposed settlement provides incentive to Microsoft to come up with new technologies and new procedures that allow it to get around the limitations imposed by the proposed settlement. If the settlement requires disclosure of APIs on a given date, Microsoft will have incentive to redefine the interface between its products so that the interface falls outside the definition of "API". They will also have incentive to be sure that the APIs change to include new or modified services shortly after disclosure.

The proposed settlement establishes a situation similar to one where a team

of security experts is brought together to build software that will detect
and disable all known viruses as of a given date and then go home assured
that there will be no more outbreaks in the next five years. The proposed
settlement assumes that a Technical Committee of three people could keep up
with all the changes made by the thousands of Microsoft employees. Might
we also assume that a small committee with no power to take action would
similarly provide protection against any new viruses that crop up, despite
the efforts of the experts to plug the known vulnerabilities? Anyone with
any experience in the field would know that there is no way to know or to
fix all the vulnerabilities, nor to anticipate all possible attacks. While
the team was working and after they went home others would be continuing
looking for new ways to cause mayhem.

The proposed settlement establishes a framework and invites Microsoft to
turn its massive corporate resources toward finding a way to get around the
framework. Effective action is needed to terminate the illegal monopoly,
deny Microsoft the fruits of its statutory violation, and ensure that there
remain no practices likely to result in monopolization in the future. The
proposed settlement can be expected to be totally ineffective. Any
solution must be as nimble as the monopolist and in light of past
monopolistic practice, must truly enable the competition.

Randy McLaughlin
Red Wing, Minnesota